

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O.O.C.J.

NOTICE OF MOTION NO.3569 OF 2004

IN

SUIT NO.3499 OF 2004

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M/s.Hede Consultancy Co.

Pvt.Ltd. & ors.

...Plaintiffs

v/s.

State Bank of India & Ors.

...Defendants

...

Mr.P.Janardhan with Mr.A.H.Gokhale i/b C.K.Rayon for
the Plaintiffs.

Mr.G.D.Utangale i/b Utangale & Co. for the Defendant
No.1.

Mr.S.S.Redekar for Defendant No.2.

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CORAM: D.K.DESHMUKH, J.

DATED: 2ND DECEMBER, 2005

P.C.:

1. This notice of motion has been taken out by the Plaintiff essentially for staying the execution of money decree passed by this court.

2. According to the plaintiff, the plaintiff has filed this suit for setting aside the decree passed by this court, because according to the Plaintiff the decree is vitiated by fraud. The decree was passed exparte on 14-3-1997. The present plaintiff took out the notice of motion for setting aside that decree and that notice of motion was dismissed for default on 25-4-1998. The period of limitation for filing the suit for setting a decree would start either from the date on which the decree is passed or from the date on which the Plaintiff became aware of the decree passed against the Plaintiff. That event in any case would occur in the year 1998 when the Plaintiff challenged the recovery certificate which was granted by the D.R.T. on the basis of the exparte decree. In 2000, this court slightly modified the decree only by mentioning the period of

redemption but that will not extend the period of limitation. The period spent by the Plaintiff in prosecuting those proceedings is also not liable to be excluded. Prima facie, therefore, it is clear that the present suit is barred by the law of limitation. In paragraph 25 of the plaint, the Plaintiff claims that the period of limitation will start running from March, 2002, when the appeal filed by the Plaintiff against the order slightly modifying the decree was dismissed. In my opinion, the ground raised for extension of period of limitation has no substance. The suit appears to be a desperate attempt by the Plaintiff to avoid payment of money under the decree. To my mind, there is no doubt that the present suit is clearly barred by the law of limitation. Therefore, it cannot be said that the Plaintiff has made out any prima facie case. As the Plaintiff does not have a prima facie case, there is no question of granting any interim order in favour of the Plaintiff. Notice of Motion disposed of.

3. At this stage a request is made for continuation of the ad-interim order. The exparte decree was passed in favour of the nationalised bank in the year 1997. It was a money decree. On one pretext or

other the Plaintiff has been successful in avoiding execution of the decree so long. In my opinion, it will be against the interest of justice, to continue the ad-interim order which has the effect of staying the money decree even for a day. A request is, therefore, rejected.

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